

Section 218b, act Aug. 15, 1921, ch. 64, title V, §503, as added Aug. 14, 1935, ch. 532, 49 Stat. 649, defined "live poultry dealer".

Section 218c, act Aug. 15, 1921, ch. 64, title V, §504, as added Aug. 14, 1935, ch. 532, 49 Stat. 649, related to application of other provisions of this chapter to this subchapter and posting of rates, charges, and rentals in licensee's place of business.

Section 218d, act Aug. 15, 1921, ch. 64, title V, §505, as added Aug. 14, 1935, ch. 532, 49 Stat. 649, related to suspension and revocation of licenses.

#### EFFECTIVE DATE OF REPEAL

Repeal effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as an Effective Date of 1987 Amendment note under section 182 of this title.

### SUBCHAPTER V—GENERAL PROVISIONS

#### § 221. Accounts and records of business; punishment for failure to keep

Every packer, any live poultry dealer, stockyard owner, market agency, and dealer shall keep such accounts, records, and memoranda as fully and correctly disclose all transactions involved in his business, including the true ownership of such business by stockholding or otherwise. Whenever the Secretary finds that the accounts, records, and memoranda of any such person do not fully and correctly disclose all transactions involved in his business, the Secretary may prescribe the manner and form in which such accounts, records, and memoranda shall be kept, and thereafter any such person who fails to keep such accounts, records, and memoranda in the manner and form prescribed or approved by the Secretary shall upon conviction be fined not more than \$5,000, or imprisoned not more than three years, or both.

(Aug. 15, 1921, ch. 64, title IV, §401, 42 Stat. 168; Aug. 15, 1921, ch. 64, title V, §503, as added Aug. 14, 1935, ch. 532, 49 Stat. 649; Nov. 23, 1987, Pub. L. 100-173, §6, 101 Stat. 918.)

#### AMENDMENTS

1987—Pub. L. 100-173 substituted " , any live poultry dealer," for "or any live poultry dealer or handler."

1935—Act Aug. 15, 1921, title V, §503, as added Aug. 14, 1935, inserted "or any live poultry dealer or handler" after "packer" wherever appearing.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-173 effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as a note under section 182 of this title.

#### LIENS OR SECURITY INTERESTS AGAINST LIVESTOCK; INTERAGENCY TASK FORCE TO RECOMMEND METHOD OF PROVIDING INFORMATION TO PURCHASERS; REPORT TO CONGRESS

Pub. L. 95-409, §2, Oct. 2, 1978, 92 Stat. 887, required the Secretary of Agriculture to appoint a task force to recommend methods of providing information to purchasers of livestock concerning the existence of a lien or security interest against livestock and to submit a report to Congress not later than Feb. 1, 1979.

#### § 222. Federal Trade Commission powers adopted for enforcement of chapter

For the efficient execution of the provisions of this chapter, and in order to provide information for the use of Congress, the provisions (including penalties) of sections 46 and 48 to 50 of title 15, are made applicable to the jurisdiction,

powers, and duties of the Secretary in enforcing the provisions of this chapter and to any person subject to the provisions of this chapter, whether or not a corporation. The Secretary, in person or by such agents as he may designate, may prosecute any inquiry necessary to his duties under this chapter in any part of the United States.

(Aug. 15, 1921, ch. 64, title IV, §402, 42 Stat. 168; Aug. 15, 1921, ch. 64, title V, §503, as added Aug. 14, 1935, ch. 532, 49 Stat. 649.)

#### AMENDMENTS

1935—Act Aug. 15, 1921, §503, as added Aug. 14, 1935, purported to insert "or any live poultry dealer or handler" after "packer" but word "packer" does not appear in this section.

#### TRANSFER OF FUNCTIONS

Executive and administrative functions of Federal Trade Commission, with certain reservations, transferred to Chairman of such Commission by 1950 Reorg. Plan No. 8, §1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

#### FEDERAL RULES OF CIVIL PROCEDURE

Subpoena and application of Rules of Civil Procedure, see rules 45 and 81, Title 28, Appendix, Judiciary and Judicial Procedure.

#### § 223. Responsibility of principal for act or omission of agent

When construing and enforcing the provisions of this chapter, the act, omission, or failure of any agent, officer, or other person acting for or employed by any packer, any live poultry dealer, stockyard owner, market agency, or dealer, within the scope of his employment or office, shall in every case also be deemed the act, omission, or failure of such packer, any live poultry dealer, stockyard owner, market agency, or dealer, as well as that of such agent, officer, or other person.

(Aug. 15, 1921, ch. 64, title IV, §403, 42 Stat. 168; Aug. 15, 1921, ch. 64, title V, §503, as added Aug. 14, 1935, ch. 532, 49 Stat. 649; amended Nov. 23, 1987, Pub. L. 100-173, §6, 101 Stat. 918.)

#### AMENDMENTS

1987—Pub. L. 100-173 substituted " , any live poultry dealer," for "or any live poultry dealer or handler," in two places.

1935—Act Aug. 15, 1921, title V, §503, as added Aug. 14, 1935, inserted "or any live poultry dealer or handler" after "packer" wherever appearing.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-173 effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as a note under section 182 of this title.

#### § 224. Attorney General to institute court proceedings for enforcement

The Secretary may report any violation of this chapter to the Attorney General of the United States, who shall cause appropriate proceedings to be commenced and prosecuted in the proper courts of the United States without delay.

(Aug. 15, 1921, ch. 64, title IV, §404, 42 Stat. 168; Aug. 15, 1921, ch. 64, title V, §503, as added Aug. 14, 1935, ch. 532, 49 Stat. 649.)

## AMENDMENTS

1935—Act Aug. 15, 1921, title V, §503, as added Aug. 14, 1935, purported to insert “or any live poultry dealer or handler” after “packer” but word “packer” does not appear in this section.

## CROSS REFERENCES

Enforcement by Secretary of Agriculture under this chapter, with respect to activities subject to this chapter, of requirements imposed under section 1601 et seq. of Title 15, Commerce and Trade, see section 1607 of Title 15.

**§ 225. Laws unaffected**

Nothing contained in this chapter, except as otherwise provided herein, shall be construed—

(a) To prevent or interfere with the enforcement of, or the procedure under, the provisions of the Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies,” approved July 2, 1890, the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,” approved October 15, 1914, the Interstate Commerce Act as amended, the Act entitled “An Act to promote export trade, and for other purposes,” approved April 10, 1918 [15 U.S.C. 61 et seq.] or sections 73 to 77, inclusive, of the Act of August 27, 1894, entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes,” as amended by the Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes,’” approved February 12, 1913, or

(b) To alter, modify, or repeal such Acts or any part or parts thereof, or

(c) To prevent or interfere with any investigation, proceeding, or prosecution begun and pending on August 15, 1921.

(Aug. 15, 1921, ch. 64, title IV, §405, 42 Stat. 168.)

## REFERENCES IN TEXT

The Act entitled “An Act to protect trade and commerce against unlawful restraints and monopolies”, approved July 2, 1890, referred to in subsec. (a), means act July 2, 1890, ch. 647, 26 Stat. 209, as amended, known as the Sherman Act, which enacted sections 1 to 7 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 1 of Title 15 and Tables.

The Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies and for other purposes”, approved October 15, 1914, referred to in subsec. (a), is act Oct. 15, 1914, ch. 323, 38 Stat. 730, as amended, known as the Clayton Act, which is classified generally to sections 12, 13, 14 to 19, 20, 21, and 22 to 27 of Title 15, and sections 52 and 53 of Title 29, Labor. For further details and complete classification of the Act to the Code, see References in Text note set out under section 12 of Title 15 and Tables.

The Interstate Commerce Act, referred to in subsec. (a), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§1 et seq.), 8 (§301 et seq.), 12 (§901 et seq.), 13 (§1001 et seq.), and 19 (1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, §4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

The Act entitled “An Act to promote export trade and for other purposes”, approved April 10, 1918, re-

ferred to in subsec. (a), means act Apr. 10, 1918, ch. 50, 40 Stat. 516, known as the Webb-Pomerene Act, which is classified generally to subchapter II (§61 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 66 of Title 15 and Tables.

Sections 73 to 77, inclusive, of the Act of August 27, 1894, entitled “An Act to reduce taxation, to provide revenue for the Government, and for other purposes”, referred to in subsec. (a), are sections 73 to 77 of act Aug. 27, 1894, ch. 349, 28 Stat. 570, as amended, and are known as the Wilson Tariff Act. Sections 73 to 76 enacted sections 8 to 11 of Title 15. Section 77 was not classified to the Code. For complete classification of this Act to the Code, see Short Title note set out under section 8 of Title 15 and Tables.

The Act entitled “An Act to amend sections seventy-three and seventy-six of the Act of August twenty-seventh, eighteen hundred and ninety-four, entitled, ‘An Act to reduce taxation, to provide revenue for the Government, and for other purposes’,” approved February 12, 1913, referred to in subsec. (a), is act Feb. 12, 1913, ch. 40, 37 Stat. 667, which is classified to sections 8 and 11 of Title 15.

**§ 226. Powers of Interstate Commerce Commission unaffected**

Nothing in this chapter shall affect the power or jurisdiction of the Interstate Commerce Commission, nor confer upon the Secretary concurrent power or jurisdiction over any matter within the power or jurisdiction of such commission.

(Aug. 15, 1921, ch. 64, title IV, §406(a), 42 Stat. 169.)

## CODIFICATION

Section is comprised of subsec. (a) of section 406, of act Aug. 15, 1921. Subsecs. (b) to (e) of section 406, as amended, are classified to section 227 of this title.

ABOLITION OF INTERSTATE COMMERCE COMMISSION AND  
TRANSFER OF FUNCTIONS

Interstate Commerce Commission abolished and functions of Commission transferred, except as otherwise provided in Pub. L. 104-88, to Surface Transportation Board effective Jan. 1, 1996, by section 702 of Title 49, Transportation, and section 101 of Pub. L. 104-88, set out as a note under section 701 of Title 49. References to Interstate Commerce Commission deemed to refer to Surface Transportation Board, a member or employee of the Board, or Secretary of Transportation, as appropriate, see section 205 of Pub. L. 104-88, set out as a note under section 701 of Title 49.

## SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 1607, 1681s, 1691c, 1692l.

**§ 227. Powers of Federal Trade Commission and Secretary of Agriculture****(a) Omitted****(b) Jurisdiction of Federal Trade Commission**

The Federal Trade Commission shall have power and jurisdiction over any matter involving meat, meat food products, livestock products in unmanufactured form, or poultry products, which by this chapter is made subject to the power or jurisdiction of the Secretary, as follows:

(1) When the Secretary in the exercise of his duties requests of the Commission that it make investigations and reports in any case.

(2) In any investigation of, or proceeding for the prevention of, an alleged violation of any

Act administered by the Commission, arising out of acts or transactions involving meat, meat food products, or livestock products in unmanufactured form, if the Commission determines that effective exercise of its power or jurisdiction with respect to retail sales of any such commodities is or will be impaired by the absence of power or jurisdiction over all acts or transactions involving such commodities in such investigation or proceeding. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Commissioner shall notify the Secretary of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with regard to acts or transactions (other than retail sales) involving such commodities if the Secretary within ten days from the date of receipt of the notice notifies the Commission that there is pending in his Department an investigation of, or proceeding for the prevention of, an alleged violation of this chapter involving the same subject matter.

(3) Over all transactions in commerce in margarine, oleomargarine, or poultry products and over retail sales of meat, meat food products and livestock products in unmanufactured form.

**(c) Limitation of Federal Trade Commission jurisdiction**

The Federal Trade Commission shall have no power or jurisdiction over any matter which by this chapter is made subject to the jurisdiction of the Secretary, except as provided in subsection (b) of this section.

**(d) Jurisdiction of Secretary of Agriculture except for poultry products**

The Secretary of Agriculture shall exercise power or jurisdiction over oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form only when he determines, in any investigation of, or any proceeding for the prevention of, an alleged violation of this chapter, that such action is necessary to avoid impairment of his power or jurisdiction over acts or transactions involving livestock, meat, meat food products, livestock products in unmanufactured form, or poultry other than retail sales thereof. In order to avoid unnecessary duplication of effort by the Government and burdens upon the industry, the Secretary shall notify the Federal Trade Commission of such determination, the reasons therefor, and the acts or transactions involved, and shall not exercise power or jurisdiction with respect to acts or transactions involving oleomargarine or retail sales of meat, meat food products, or livestock products in unmanufactured form if the Commission within 10 days from the date of receipt of such notice notifies the Secretary that there is pending in the Commission an investigation of, or proceeding for the prevention of, an alleged violation of any Act administered by the Commission involving the same subject matter.

**(e) Jurisdiction of Secretary of Agriculture regarding poultry products**

The Secretary of Agriculture shall exercise jurisdiction over poultry products only in a pro-

ceeding brought under section 197 of this title or section 228b-1 of this title when such action is necessary to avoid impairment of his jurisdiction.

**(f) Information to be included in annual reports**

The Secretary of Agriculture and the Federal Trade Commission shall include in their respective annual reports information with respect to the administration of subsections (b), (d), and (e) of this section.

(Aug. 15, 1921, ch. 64, title IV, § 406, 42 Stat. 169; Sept. 2, 1958, Pub. L. 85-909, § 1(2), 72 Stat. 1749; Nov. 23, 1987, Pub. L. 100-173, § 7, 101 Stat. 919; Dec. 13, 1991, Pub. L. 102-237, title X, § 1008(2), 105 Stat. 1898.)

**CODIFICATION**

Subsection (a) of section 406 is classified to section 226 of this title.

**AMENDMENTS**

1991—Subsec. (b)(2). Pub. L. 102-237 struck out comma after “unmanufactured form,”.

1987—Subsec. (b)(2). Pub. L. 100-173, § 7(1)(A)(ii), which directed insertion of “or” before “livestock products in unmanufactured form.” was executed by making insertion before “livestock products in unmanufactured form,” as the probable intent of Congress.

Pub. L. 100-173, § 7(1)(A)(i), struck out “or poultry products” after “in unmanufactured form,”.

Subsec. (b)(3). Pub. L. 100-173, § 7(1)(B), amended par. (3) generally. Prior to amendment, par. (3) read as follows: “Over all transactions in commerce in margarine or oleomargarine and over retail sales of meat, meat food products, livestock products in unmanufactured form, and poultry products.”

Subsec. (d). Pub. L. 100-173, § 7(2), amended subsec. (d) generally, striking out reference to poultry products in two places and substituting “10 days” for “ten days”.

Subsec. (e). Pub. L. 100-173, § 7(3), (4), added subsec. (e) and redesignated former subsec. (e) as (f).

Subsec. (f). Pub. L. 100-173, § 7(3), (5), redesignated former subsec. (e) as (f) and substituted “subsections (b), (d), and (e)” for “subsections (b) and (d)”.

1958—Pub. L. 85-909 substituted subsecs. (b) to (e) for former provisions providing that Federal Trade Commission shall have no power or jurisdiction over matters within jurisdiction of Secretary of Agriculture except when Secretary requests Commission to make investigations and reports in any case, which were incorporated in subsecs. (b)(1) and (c).

**EFFECTIVE DATE OF 1987 AMENDMENT**

Amendment by Pub. L. 100-173 effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as a note under section 182 of this title.

**TRANSFER OF FUNCTIONS**

Executive and administrative functions of Federal Trade Commission, with certain reservations, transferred to Chairman of such Commission by 1950 Reorg. Plan No. 8, § 1, eff. May 24, 1950, 15 F.R. 3175, 64 Stat. 1264, set out in the Appendix to Title 5, Government Organization and Employees.

**CONSTRUCTION OF 1987 AMENDMENTS**

Section 11 of Pub. L. 100-173 provided that:

“(a) GENERAL RULE.—The amendments made by this Act [see Short Title of 1987 Amendment note set out under section 181 of this title] to the Packers and Stockyards Act, 1921 [7 U.S.C. 181 et seq.], shall not be construed to limit or otherwise affect the power or jurisdiction of the Federal Trade Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to prevent the use of—

“(1) unfair methods of competition in or affecting commerce, and

“(2) unfair and deceptive acts or practices in or affecting commerce, involving poultry products.

“(b) SECRETARY’S AUTHORITY.—Subsection (a) shall not be construed to limit or otherwise affect the authority of the Secretary of Agriculture under section 406(e), as amended, of the Packers and Stockyards Act, 1921 [7 U.S.C. 227(e)].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 sections 45, 1607, 1681s, 1691c, 1692l.

### § 228. Authority of Secretary

#### (a) Rules, regulations, and expenditures; appropriations

The Secretary may make such rules, regulations, and orders as may be necessary to carry out the provisions of this chapter and may co-operate with any department or agency of the Government, any State, Territory, District, or possession, or department, agency, or political subdivision thereof, or any person; and shall have the power to appoint, remove, and fix the compensation of such officers and employees, not in conflict with existing law, and make such expenditures for rent outside the District of Columbia, printing, telegrams, telephones, law books, books of reference, periodicals, furniture, stationery, office equipment, travel, and other supplies and expenses as shall be necessary to the administration of this chapter in the District of Columbia and elsewhere, and as may be appropriated for by Congress, and there is authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary for such purpose.

#### (b) Deductions from proceeds for financing promotional, educational, and research activities

Notwithstanding any other provision of law, the authority of the Secretary under this chapter shall not apply to deductions made from sales proceeds for the purpose of financing promotion and research activities, including educational activities relating to livestock, meat, and other products covered by the chapter.

#### (c) Budget estimate; testimony of Secretary before Congressional committees

On or before February 15 of each calendar year beginning with calendar year 1977, or such other date as may be specified by the appropriate committee, the Secretary of Agriculture shall testify before the Senate Committee on Agriculture, Nutrition, and Forestry and the House Committee on Agriculture and provide justification in detail of the amount requested in the budget to be appropriated for the next fiscal year for the purposes authorized in this chapter.

#### (d) Development and promulgation of rules governing hearings

The Secretary shall, not later than sixty days after September 13, 1976, prescribe and implement rules to assure that any hearing from which any order may issue under this chapter or any hearing the expenses of which are paid from funds authorized to be appropriated under this chapter shall—

(1) if such hearing concerns a single unit of local government or the residents thereof, be held within the boundaries of such unit;

(2) if such hearing concerns a single geographic area within a State or the residents thereof, be held within the boundaries of such area; or

(3) if such hearing concerns a single State or the residents thereof, be held within such State.

#### (e) Definitions

For the purposes of subsection (d) of this section—

(1) the term “unit of local government” means a county, municipality, town, township, village, or other unit of general government below the State level; and

(2) the term “geographic area within a State” means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(Aug. 15, 1921, ch. 64, title IV, § 407, 42 Stat. 169; Sept. 2, 1958, Pub. L. 85-909, § 4, 72 Stat. 1750; July 8, 1963, Pub. L. 88-61, 77 Stat. 79; Sept. 13, 1976, Pub. L. 94-410, § 11, 90 Stat. 1252; Oct. 13, 1994, Pub. L. 103-354, title II, § 293(b), 108 Stat. 3237; Nov. 2, 1994, Pub. L. 103-437, § 4(a)(2), 108 Stat. 4581.)

#### AMENDMENTS

1994—Subsec. (b). Pub. L. 103-354, § 293(b)(1), (2), redesignated subsec. (c) as (b) and struck out former subsec. (b) which read as follows: “The Secretary shall maintain within the Department of Agriculture a separate enforcement unit to administer and enforce subchapter II of this chapter.”

Subsec. (c). Pub. L. 103-437, which directed the amendment of subsec. (d) by substituting “Committee on Agriculture, Nutrition, and Forestry” for “Committee on Agriculture and Forestry”, was executed by making the amendment to subsec. (c) to reflect the probable intent of Congress and the intervening redesignation of subsec. (d) as (c) by Pub. L. 103-354. See below.

Pub. L. 103-354, § 293(b)(2), redesignated subsec. (d) as (c). Former subsec. (c) redesignated (b).

Subsecs. (d) to (f). Pub. L. 103-354, § 293(b)(2), (3), redesignated subsecs. (d) to (f) as (c) to (e), respectively, and in subsec. (e) substituted “subsection (d)” for “subsection (e)”.

1976—Subsecs. (d) to (f). Pub. L. 94-410 added subsecs. (d) to (f).

1963—Subsec. (c). Pub. L. 88-61 added subsec. (c).

1958—Pub. L. 85-909 designated existing provisions as subsec. (a) and added subsec. (b).

#### § 228a. Authority of Secretary to request temporary injunction or restraining order

Whenever the Secretary has reason to believe that any person subject to this chapter (a) with respect to any transactions subject to this chapter, has failed to pay or is unable to pay for livestock, meats, meat food products, or livestock products in unmanufactured form, or live poultry, or has failed to pay any poultry grower what is due on account of poultry obtained under a poultry growing arrangement, or has failed to remit to the person entitled thereto the net proceeds from the sale of any such commodity sold on a commission basis; or (b) has operated while insolvent, or otherwise in violation of

this chapter in a manner which may reasonably be expected to cause irreparable damage to another person; or (c) does not have the required bond; and that it would be in the public interest to enjoin such person from operating subject to this chapter or enjoin him from operating subject to this chapter except under such conditions as would protect vendors or consignors of such commodities or other affected persons, until a complaint under this chapter is issued and dismissed by the Secretary or until an order to cease and desist made thereon by the Secretary has become final and effective within the meaning of this chapter or is set aside on appellate review of the Secretary's order, the Secretary may notify the Attorney General, who may apply to the United States district court for the district in which such person has his principal place of business or in which he resides for a temporary injunction or restraining order. When needed to effectuate the purposes of this section, the court shall, upon a proper showing, issue a temporary injunction or restraining order, without bond. Attorneys employed by the Secretary of Agriculture may, with the approval of the Attorney General, appear in the United States district court representing the Secretary in any action seeking such a temporary restraining order or injunction.

(Aug. 15, 1921, ch. 64, title IV, § 408, as added Sept. 13, 1976, Pub. L. 94-410, § 5, 90 Stat. 1250; amended Nov. 23, 1987, Pub. L. 100-173, § 8, 101 Stat. 919.)

#### CODIFICATION

A prior section 228a, act Sept. 21, 1944, ch. 412, title I, § 101(c), 58 Stat. 734, which related to inspections of livestock, hides, animal products, etc., was transferred to section 396 of this title.

#### PRIOR PROVISIONS

A prior section 408 of act Aug. 15, 1921, was renumbered section 415 and is classified to section 229 of this title.

#### AMENDMENTS

1987—Pub. L. 100-173 inserted “or live poultry, or has failed to pay any poultry grower what is due on account of poultry obtained under a poultry growing arrangement,” after “unmanufactured form,”.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-173 effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as a note under section 182 of this title.

### § 228b. Prompt payment for purchase of livestock

#### (a) Full amount of purchase price required; methods of payment

Each packer, market agency, or dealer purchasing livestock shall, before the close of the next business day following the purchase of livestock and transfer of possession thereof, deliver to the seller or his duly authorized representative the full amount of the purchase price: *Provided*, That each packer, market agency, or dealer purchasing livestock for slaughter shall, before the close of the next business day following purchase of livestock and transfer of possession thereof, actually deliver at the point of transfer of possession to the seller or his duly authorized

representative a check or shall wire transfer funds to the seller's account for the full amount of the purchase price; or, in the case of a purchase on a carcass or “grade and yield” basis, the purchaser shall make payment by check at the point of transfer of possession or shall wire transfer funds to the seller's account for the full amount of the purchase price not later than the close of the first business day following determination of the purchase price: *Provided further*, That if the seller or his duly authorized representative is not present to receive payment at the point of transfer of possession, as herein provided, the packer, market agency or dealer shall wire transfer funds or place a check in the United States mail for the full amount of the purchase price, properly addressed to the seller, within the time limits specified in this subsection, such action being deemed compliance with the requirement for prompt payment.

#### (b) Waiver of prompt payment by written agreement; disclosure requirements

Notwithstanding the provisions of subsection (a) of this section and subject to such terms and conditions as the Secretary may prescribe, the parties to the purchase and sale of livestock may expressly agree in writing, before such purchase or sale, to effect payment in a manner other than that required in subsection (a) of this section. Any such agreement shall be disclosed in the records of any market agency or dealer selling the livestock, and in the purchaser's records and on the accounts or other documents issued by the purchaser relating to the transaction.

#### (c) Delay in payment or attempt to delay deemed unfair practice

Any delay or attempt to delay by a market agency, dealer, or packer purchasing livestock, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for such livestock shall be considered an “unfair practice” in violation of this chapter. Nothing in this section shall be deemed to limit the meaning of the term “unfair practice” as used in this chapter.

(Aug. 15, 1921, ch. 64, title IV, § 409, as added Sept. 13, 1976, Pub. L. 94-410, § 7, 90 Stat. 1250.)

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 196, 228c of this title.

### § 228b-1. Final date for making payment to cash seller or poultry grower

#### (a) Delivery of full amount due

Each live poultry dealer obtaining live poultry by purchase in a cash sale shall, before the close of the next business day following the purchase of poultry, and each live poultry dealer obtaining live poultry under a poultry growing arrangement shall, before the close of the fifteenth day following the week in which the poultry is slaughtered, deliver, to the cash seller or poultry grower from whom such live poultry dealer obtains the poultry, the full amount due to such cash seller or poultry grower on account of such poultry.

**(b) Delay or attempt to delay collection of funds as “unfair practice”**

Any delay or attempt to delay, by a live poultry dealer which is a party to any such transaction, the collection of funds as herein provided, or otherwise for the purpose of or resulting in extending the normal period of payment for poultry obtained by poultry growing arrangement or purchased in a cash sale, shall be considered an “unfair practice” in violation of this chapter. Nothing in this section shall be deemed to limit the meaning of the term “unfair practice” as used in this chapter.

**(c) Definition of cash sale**

For the purpose of this section, a cash sale means a sale in which the seller does not expressly extend credit to the buyer.

(Aug. 15, 1921, ch. 64, title IV, § 410, as added Nov. 23, 1987, Pub. L. 100-173, § 9(2), 101 Stat. 920.)

PRIOR PROVISIONS

A prior section 410 of act Aug. 15, 1921, was renumbered section 414 and is classified to section 228c of this title.

EFFECTIVE DATE

Section effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as an Effective Date of 1987 Amendment note under section 182 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 197, 227, 228b-2 of this title.

**§ 228b-2. Violations by live poultry dealers**

**(a) Written complaint by Secretary; hearing; intervention; amended complaint**

Whenever the Secretary has reason to believe that any live poultry dealer has violated or is violating any provision of section 197 of this title or section 228b-1 of this title, he shall cause a complaint in writing to be served upon the live poultry dealer, stating his charges in that respect, and requiring the live poultry dealer to attend and testify at a hearing at a time and place designated therein, at least 30 days after the service of such complaint; and at such time and place there shall be afforded the live poultry dealer a reasonable opportunity to be informed as to the evidence introduced against him (including the right of cross-examination), and to be heard in person or by counsel and through witnesses, under such regulations as the Secretary may prescribe. Any person for good cause shown may, on application, be allowed by the Secretary to intervene in such proceeding, and appear in person or by counsel. At any time prior to the close of the hearing, the Secretary may amend the complaint; but in case of any amendment adding new charges, the hearing shall, on the request of the live poultry dealer, be adjourned for a period not exceeding 15 days.

**(b) Report on findings of fact by Secretary; cease and desist order; assessment of civil penalty; action by Attorney General upon live poultry dealer's failure to pay penalty**

If, after such hearing, the Secretary finds that the live poultry dealer has violated, or is violating, any provisions of section 197 of this title or

section 228b-1 of this title covered by the charges, he shall make a report in writing in which he shall state his findings as to the facts, and shall issue and cause to be served on the live poultry dealer an order requiring such live poultry dealer to cease and desist from continuing such violation. The testimony taken at the hearing shall be reduced to writing and filed in the records of the Department of Agriculture. The Secretary may also assess a civil penalty of not more than \$20,000 for each such violation. In determining the amount of the civil penalty to be assessed under this section, the Secretary shall consider the gravity of the offense, the size of the business involved, and the effect of the penalty on the person's ability to continue in business: *Provided, however*, That in no event can the penalty assessed by the Secretary take priority over or impede the ability of the live poultry dealer to pay any unpaid cash seller or poultry grower. If, after the lapse of the period allowed for appeal or after the affirmation of such penalty, the person against whom the civil penalty is assessed fails to pay such penalty, the Secretary may refer the matter to the Attorney General, who may recover such penalty by an action in the appropriate District Court of the United States.

**(c) Amendment or setting aside of report or order**

Until the record in such hearing has been filed in a court of appeals of the United States, as provided in section 228b-3 of this title, the Secretary, at any time, upon such notice and in such manner as he deems proper, but only after reasonable opportunity to the live poultry dealer to be heard, may amend or set aside the report or order, in whole or in part.

**(d) Service of complaints, orders, and other processes**

Complaints, orders, and other processes of the Secretary under this section may be served in the same manner as provided in section 45 of title 15.

(Aug. 15, 1921, ch. 64, title IV, § 411, as added Nov. 23, 1987, Pub. L. 100-173, § 9(2), 101 Stat. 920.)

PRIOR PROVISIONS

A prior section 411 of act Aug. 15, 1921, was renumbered section 415 and is classified to section 229 of this title.

EFFECTIVE DATE

Section effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as an Effective Date of 1987 Amendment note under section 182 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 228b-3, 228b-4 of this title.

**§ 228b-3. Judicial review of order regarding live poultry dealer**

**(a) Finality of order unless appeal to court of appeals; time limit; bond**

An order made under section 228b-2 of this title shall be final and conclusive unless within 30 days after service the live poultry dealer appeals to the court of appeals for the circuit in

which he has his principal place of business, by filing with the clerk of such court a written petition praying that the Secretary's order be set aside or modified in the manner stated in the petition, together with a bond in such sum as the court may determine, conditioned that such live poultry dealer will pay the costs of the proceedings if the court so directs.

**(b) Notification of appeal to Secretary; filing of record with court**

The clerk of the court shall immediately cause a copy of the petition to be delivered to the Secretary, and the Secretary shall thereupon file in the court the record in such proceedings, as provided in section 2112 of title 28. If before such record is filed the Secretary amends or sets aside his report or order, in whole or in part, the petitioner may amend the petition within such time as the court may determine, on notice to the Secretary.

**(c) Issuance of temporary injunction**

At any time after such petition is filed, the court, on application of the Secretary, may issue a temporary injunction, restraining, to the extent it deems proper, the live poultry dealer and his officers, directors, agents, and employees, from violating any of the provisions of the order pending the final determination of the appeal.

**(d) Evidence in record as evidence in case; expedited proceedings**

The evidence so taken or admitted, and filed as aforesaid as a part of the record, shall be considered by the court as the evidence in the case. The proceedings in such cases in the court of appeals shall be made a preferred cause and shall be expedited in every way.

**(e) Action by court**

The court may affirm, modify, or set aside the order of the Secretary.

**(f) Taking of additional evidence; modified or additional findings by Secretary**

If the court determines that the just and proper disposition of the case requires the taking of additional evidence, the court shall order the hearing to be reopened for the taking of such evidence, in such manner and upon such terms and conditions as the court may deem proper. The Secretary may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken, and he shall file such modified or new findings and his recommendations, if any, for the modification or setting aside of his order, with the return of such additional evidence.

**(g) Affirmance or modification of order as injunction**

If the court of appeals affirms or modifies the order of the Secretary, its decree shall operate as an injunction to restrain the live poultry dealer, and his officers, directors, agents, and employees from violating the provisions of such order or such order as modified.

**(h) Exclusive jurisdiction of court of appeals; finality of decree; appeal to Supreme Court; stay of decree**

The court of appeals shall have jurisdiction which upon the filing of the record with it shall

be exclusive, to review, and to affirm, set aside, or modify, such orders of the Secretary, and the decree of such court shall be final except that it shall be subject to review by the Supreme Court of the United States upon certiorari, as provided in section 1254 of title 28, if such writ is duly applied for within 60 days after entry of the decree. The issue of such writ shall not operate as a stay of the decree of the court of appeals, insofar as such decree operates as an injunction, unless so ordered by the Supreme Court.

(Aug. 15, 1921, ch. 64, title IV, § 412, as added Nov. 23, 1987, Pub. L. 100-173, § 9(2), 101 Stat. 921.)

**EFFECTIVE DATE**

Section effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as an Effective Date of 1987 Amendment note under section 182 of this title.

**SECTION REFERRED TO IN OTHER SECTIONS**

This section is referred to in sections 228b-2, 228b-4 of this title.

**§ 228b-4. Violation of final order by live poultry dealer; penalty**

Any live poultry dealer, or any officer, director, agent, or employee of a live poultry dealer, who fails to obey any order of the Secretary issued under the provisions of section 228b-2 of this title, or such order as modified—

(1) after the expiration of the time allowed for filing a petition in the court of appeals to set aside or modify such order, if no such petition has been filed within such time;

(2) after the expiration of the time allowed for applying for a writ of certiorari, if such order, or such order as modified, has been sustained by the court of appeals and no such writ has been applied for within such time; or

(3) after such order, or such order as modified, has been sustained by the courts as provided in section 228b-3 of this title;

shall on conviction be fined not less than \$1,000 nor more than \$20,000. Each day during which such failure continues shall be deemed a separate offense.

(Aug. 15, 1921, ch. 64, title IV, § 413, as added Nov. 23, 1987, Pub. L. 100-173, § 9(2), 101 Stat. 922.)

**EFFECTIVE DATE**

Section effective 90 days after Nov. 23, 1987, see section 12 of Pub. L. 100-173, set out as an Effective Date of 1987 Amendment note under section 182 of this title.

**§ 228c. Federal preemption of State and local requirements**

No requirement of any State or territory of the United States, or any subdivision thereof, or the District of Columbia, with respect to bonding of packers or prompt payment by packers for livestock purchases may be enforced upon any packer operating in compliance with the bonding provisions under section 204 of this title, and prompt payment provisions of section 228b of this title, respectively: *Provided*, That this section shall not preclude a State from enforcing a requirement, with respect to payment for livestock purchased by a packer at a stockyard subject to this chapter, which is not in conflict with this chapter or regulations there-

